Commonwealth of Massachusetts SUPERIOR COURT DEPARTMENT THE TRIAL COURT CAMBRIDGE

MICV. 2003- 03-4225

I, Karen O'Connor, Deputy Assistant Clerk of the Superior Court, within and for said County of Middlesex, do certify that the annexed papers are true copies made by photographic process of pleadings entered in the Superior Court on the 15th.ofOctobe in the year of our Lord Two Thousand three

In testimony whereof, I hereunto set my hand and affix the seal of said Superior Court, at Cambridge, in said County, this 22nd. of Dec. in the year of our Lord Two Thousand. three

Deputy Assistant Clerk



ON UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

CIVIL ACTION NO.

EMORY ZIPPERER,

Plaintiff,

v.

RAYTHEON COMPANY,

Defendant.

03 CV 1 2 3 7 9 MLW

NOTICE OF REMOVAL

Pursuant to 28 U.S.C. §§ 1441 and 1446, defendant Raytheon Company ("Raytheon") hereby removes this action to the United States District Court for the District of Massachusetts. As grounds therefore, Raytheon states as follows.

- 1. Raytheon was served with the Summons and Complaint on October 29, 2003.

 Copies of all process, pleadings, and orders currently received by Raytheon are attached hereto as Exhibit A in accordance with 28 U.S.C. § 1446(a).
 - 2. Pursuant to 28 U.S.C. § 1446(b), this removal notice is timely.
- 3. In his claim, the plaintiff brings three claims for negligence, equitable estoppel, and negligent misrepresentation each of which is based on Raytheon's alleged conduct as an administrator of a pension plan governed by the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §§ 1001, et seq. For example, in paragraph 20, Zipperer alleges that "[b]ased on information [he] received from the [Raytheon Engineers & Constructors] Pension Administrator, [he] and his wife Mary each decided to retire, purchase a motor coach and travel throughout the United States." Zipperer alleges that the information he received from the

pension administrator was incorrect, thereby causing him to retire earlier than he otherwise would have.

- Zipperer's claims are governed exclusively by ERISA and are in the nature of a 4. breach of fiduciary duty under § 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(3).
- The district courts of the United States have exclusive jurisdiction over all claims 5. under § 502(a)(3) of ERISA. 29 U.S.C. § 1132(e)(1).
- Concurrent with the filing of this Notice of Removal, Raytheon is providing 6. notice of the removal to all adverse parties and to the clerk of the Middlesex Superior Court, pursuant to 28 U.S.C. § 1446(d).

WHEREFORE, Raytheon removes this action pursuant to 28 U.S.C. §§ 1441 and 1446.

RAYTHEON COMPANY By its attorneys,

James F. Kavanaugh, Jr.

BBO# 262360

Stephen S. Churchill

BBO# 564158

CONN KAVANAUGH ROSENTHAL

PEISCH & FORD, LLP ·

Ten Post Office Square

Boston, MA 02109

(617) 482-8200

Dated: November 25, 2003

188784.1

CERTIFICATE OF SERVICE

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Case 1:03-cv-12379-MLW Document 4 Filed 01/08/2004 Page 5 of 16

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX	22
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SUPERIOR COURT DEPARTMENT OF THE TRIAL COURT CIVIL ACTION

No. 03-4225

Emory Zipperer

..... Plaintiff(s)

... Raytheon Company, Inc. Defendant(s)

v.

SUMMONS

To the 2000-12010 Decidant Raytheon Company, Inc., 141 Spring Street,	*
You are hereby summoned and required to serve upon Lexington, MA	
Theresa. Finn. Dever, plaintiff's attorney, whose address is 210. Broadway, Suite	201,
Lynnfield, MA01.940	
served upon you, within 20 days after service of this summons upon you, exclusive of the day of service. If you	
fail to do so, judgment by default will be taken against you for the relief demanded in the complaint. You are also	
required to file your answer to the complaint in the office of the Clerk of this court at	
Cambridge either before service upon plaintiff's attorney or within a	
reasonable time thereafter.	
Unless otherwise provided by Rule 13(a), your answer must state as a counterclaim any claim which you may	
have against the plaintiff which arises out of the transaction or occurrence that is the subject matter of the plaintiff's	
claim or you will thereafter be barred from making such claim in any other action.	
Witness, ROBERT A MULLIGAN Esquire, at	
the	
THE COF HANDE Sar of our Lord prochounand with hand polyed and two thousand and	thre
DEPUTY SHERIFF Middlesex County Clerk Clerk	

NOTES.

1. This summons is issued pursuant to Rule 4 of the Massachusetts Rules of Civil Procedure.

2. When more than one defendant is involved, the names of all defendants should appear in the caption. If a separate summons is used for each defendant, each should be addressed to the particular defendant:

NOTICE TO DEFENDANT - You need not appear personally in court to answer the complaint, but if you claim to have a defense, either you or your attorney must serve a copy of your written answer within 20 days as specified herein and also file the original in the Clerk's Office.

COMMONWEALTH OF MASSACHUSETTS

MIDDLESEX, SS.	garanta da santa da s	SUPERIOR CO	OURT
EMORY ZIPPERER			
Plaintiff,))	
VS.		Civil Action No.	03-4225
RAYTHEON COMPANY, INC.	:))	
Defendant.	:))	

COMPLAINT

NATURE OF THE ACTION

1. Plaintiff Emory Zipperer ("Zipperer") brings this action for negligence against Defendant Raytheon Company, Inc. ("Raytheon") in connection with the Defendant's negligent maintenance of employment records concerning Zipperer's years of employment with Raytheon and its affiliates and successors. Raytheon's failure to maintain proper corporate records concerning Zipperer's employment resulted in Raytheon Benefit Center's provision of incorrect data and information to Zipperer concerning his retirement benefits. Plaintiff seeks to recover damages, interest, costs and attorney's fees for Raytheon's negligence.

PARTIES

- 2. The Plaintiff Emory Zipperer ("Zipperer") is an individual with a permanent address of 149 Rainbow Drive, No. 4996, Livingston, Texas.
- The Defendant Raytheon Company ("Raytheon") is a corporation 3. organized under the laws of the Commonwealth of Massachusetts having a principal place of business at 141 Spring Street in Lexington, Massachusetts.

Factual Allegations

- Emory Zipperer began working for United Engineers & Constructors, Inc. 4. (UE&C), a wholly owned subsidiary of Raytheon, on November 20, 1972 as a field engineer in the nuclear power division.
- On or about January 1, 1975, Zipperer began participating in the UE&C 5. Retirement Plan.
- On or about November 2, 1990, Zipperer began working for a Raytheon 6. subsidiary, Raytheon Services, Nevada ("RSN") at the request of his employer. (See document from personnel file attached hereto as Exhibit A).
- 7. RSN participated in atomic testing and chemical weapons disposal programs at sites in Nevada.
- 8. Upon information and belief, Raytheon formed RSN in order to protect itself from the potential liabilities associated with atomic testing and chemical weapons disposal.
- When Zipperer began working for RSN no monies were transferred from 9. the UE&C retirement plan to the RSN plan since Zipperer was "still a Raytheon employee and both plans were part of the Raytheon Master Trust Fund."

- 10. Although both plans were administered by Raytheon Benefit Center, assets for the RSN Pension Plan were paid by Department of Energy funding while the UE&C plan assets were from proceeds of UE&C.
- According to the Raytheon Benefit Center, Zipperer's service date with RSN was adjusted to reflect his prior service with UE&C
- 12. On October 4, 1993, Mr. Zipperer separated from his employment at RSN and was rehired at RE&C, a successor to UE&C, on November 29, 1993. RE&C immediately credited Zipperer with his prior years of service with UE&C for the purpose of calculating his pension benefits.
- On or about December 30, 1995, Betchel Nevada through a competitive bid process replaced RSN as a contractor for the DOE. RSN was a specialty company for Raytheon solely for the purpose of administering work for the DOE, Nevada Operations. The Raytheon Benefit Center has represented that as of that date, the RSN pension trust fund monies were transferred to the Bechtel Nevada Employees Retirement Plan.
- 14. Apparently when RSN was succeeded by Betchel, RE&C was not notified by Raytheon and RSN that Zipperer's entire vested RSN benefit which included [his]

 UE&C benefit) was being transferred to Bechtel.
- 15. Accordingly, when RE&C was sold to Washington Group International ("WGI") on July 7, 2000, Raytheon reported this incorrect, overstated benefit transferred to the Raytheon Benefits Center database.

 16. None of the P.
- 16. None of the Raytheon pension plans were amended to reflect the asset transfers to the Betchel pension plan.

- 17. On or about December 27, 1999, Zipperer completed a Request for Retirement Calculations Form and sent it to W. Scott Bishop, the Pension Administrator for RE&C.
- On that Form, Zipperer indicated that he had prior service with United Engineers & Constructors, Inc. and Raytheon Company. On the Form, he requested that his retirement benefits be calculated as of April 1, 2000.
- Retirement Benefits for Zipperer. According to the Computation of Benefits, Zipperer could expect to receive \$1,100.17 monthly if he chose a single life annuity with no rights of survivorship; \$1,063.11 monthly if he chose 10 year certain and continuous; or \$980.55 monthly if he chose joint and survivor annuities
- 20. Based on the information Zipperer received from the RE&C Pension Administrator, Zipperer and his wife Mary each decided to retire, purchase a motor coach and travel throughout the United States.

 21. Emory and the Emory an
- Emory retired from his senior level job as a Project Controls Manager for Washington Group International ("WGI") and an annual salary of \$107,484. Mary Zipperer retired from her job as a Senior Examiner for United National Insurance Co. with an annual salary of \$69,076.
- 22. Specifically, Emory Zipperer retired from WGI, as it purchased RE&C in July, 2000 on or about September 30, 2000.

 23. Shortly than 2
- 23. Shortly thereafter, Mr. Zipperer began receiving monthly pension checks from Raytheon in the amount of \$840.64.

- 24. In June 2001, Mr. Zipperer received a letter from W. Scott Bishop the Raytheon Benefit Center informing him that his pension benefits had been incorrectly overstated, and that, in actuality he was entitled to receive only \$400.06 per month.
- 25. Emory Zipperer appealed the decision concerning his pension benefits and has exhausted all internal appeal procedures.

<u>COUNT I</u> NEGLIGENCE

- 26. Plaintiff realleges and incorporates herein the allegations set forth in Paragraphs 1 to 25 above.

 27. Rauthan
- 27. Raytheon owed a duty to Zipperer to properly maintain records and information concerning his retirement plan.

 28. Raytheon
- 28. Raytheon breached its duty to Zipperer by failing to properly maintain his employment records.

 29. As a rocal.
- As a result of Raytheon's breach, Raytheon's Benefit Center had incorrect information in its database concerning Zipperer's dates of employment with Raytheon and its affiliates and his benefits.
- 30. As a result of Raytheon's breach, Raytheon's Benefit Center furnished Zipperer with incorrect information concerning the amount of his monthly retirement benefits.
- 31. Zipperer, in turn, relied on the incorrect information to his detriment when he made the decision to retire from his position with Raytheon's successor WI.
- 32. As a result of Raytheon's negligence, Plaintiff has suffered damage including his present lost wages, lost benefits, future income and attorneys' fees and costs.

- WHEREFORE, Plaintiff hereby demands that this Court: 33,
 - a. Award judgment in the Plaintiff's favor on his claim for negligence;
 - b. Award Plaintiff his damages plus attorneys' fees and
 - c. Award the Plaintiff any other relief this Court deems appropriate.

COUNT II EQUITABLE ESTOPPPEL

- Plaintiff realleges and incorporates herein the allegations set forth in 34. Paragraphs 1 to 33 above. 35.
- Zipperer reasonably relied upon incorrect information given to him by W. Scott Bishop of the Raytheon Benefit Center concerning the amount of Zipperer's monthly pension benefits upon his retirement. 36.
- The Raytheon Benefit Center had reason to know that Emory Zipperer would rely upon such information in making the decision when to retire.
- Zipperer relied upon such information to his detriment giving up his job at WGI, giving up his home, and deciding to travel.
 - WHEREFORE, Plaintiff hereby demands that this Court:
 - a. Award judgment in the Plaintiff's favor on his claim for equitable estoppel;
 - b. Award Plaintiff his damages plus attorneys' fees and
 - c. Award the Plaintiff any other relief this Court deems appropriate.

COUNT III NEGLIGENT MISREPRESENTATION

- 39. Plaintiff realleges and incorporates herein the allegations set forth in Paragraphs 1 to 38 above.
 - 40. Defendant owed Plaintiff a duty to furnish correct information to him.
- 41. Defendant did not exercise reasonable care in the provision of information to Zipperer concerning the amount of his pension benefit upon retirement.
- 42. Defendant Raytheon negligently provided false information to Zipperer concerning the amount of his pension benefit upon retirement.
 - 43. Zipperer reasonably relied upon the false information.
- 44. As a result of Raytheon's negligent misrepresentation, Plaintiff has suffered damage including his present lost wages, lost benefits, future income and attorneys' fees and costs.
 - 45. WHEREFORE, Plaintiff hereby demands that this Court:
 - a. Award judgment in the Plaintiff's favor on his claim for negligent misrepresentation;
 - b. Award Plaintiff his damages plus attorneys' fees and costs; and
 - c. Award the Plaintiff any other relief this Court deems appropriate.

Plaintiff hereby claims his right to a trial by jury

EMORY ZIPPERER

By his attorney,

Joseph P. Dever

B.B.O. No. 564237

Theresa Finn Dever

B.B.O. No. 564319

RILEY & DEVER, P.C.

Lynnfield Woods Office Park

210 Broadway, Suite 201

Lynnfield, MA 01940-2351

(781) 581-9880

Dated: 10-6-03

JS 44 (Rev. 3/99).

CIVIL COVER SHEET

The JS-44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

of the Clerk of Court for the pr	urpose of initiating the civ	il docket sneet.	(SEE INST	DEFENDANTS		
. (a) PLAINTIFFS						
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IV. NATURE OF SUI	(PLACE AN "X" IN ONE	BOX ONLY)				
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110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment 8 Enforcement of Judgment 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excl. Veterans) 153 Recovery of Overpayment of Veteran's Benefits	PERSONAL INJURY 310 Airplane 315 Airplane Product Lability 320 Assault, Libel & Stander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle	PERSONAL II 362 Personal in Med. Malp 365 Personal in Product Lie 368 Asbestos Pinjury Produ PERSONAL PRI 370 Other Frau 371 Truth in Ler 380 Other Pers	jury — ractice jury — bility ersonal uct Liability OPERTY d inding	☐ 610 Agriculture ☐ 620 Other Food & Drug ☐ 625 Drug Related Seizure of Property 21 USC 881 ☐ 630 Liquor Laws ☐ 640 R.R. & Truck ☐ 650 Airline Regs. ☐ 660 Occupational Safety/Health ☐ 690 Other LABOR	□ 422 Appeal 28 USC 158 □ 423 Withdrawal 28 USC 157 PROPERTY RIGHTS □ 820 Copyrights □ 830 Patent □ 840 Trademark SOCIAL SECURITY	410 Antitrust 430 Banks and Banking 450 Commerce/ICC Rates/etc. 460 Deportation 470 Racketeer Influenced and Compt Organizations 510 Selective Service 850 Securities/Commodities/Exchange 875 Customer Challenge 12 USC 3410 914 Agricultural Acts
☐ 150 Stockholders' Suits ☐ 190 Other Contract ☐ 195 Contract Product Liability REAL PROPERTY	☐ 355 Motor Vehicle Product Liability ☐ 360 Other Personal Injury CIVIL RIGHTS	PRISONER PE	amage ability	☐ 710 Fair Labor Standards Act ☐ 720 Labor/Mgmt. Relations ☐ 730 Labor/Mgmt. Reporting	☐ 861 HIA (1395ff) ☐ 862 Black Lung (923) ☐ 863 DIWC/DIWW (405(g)) ☐ 864 SSID Title XVI ☐ 865 RSI (405(g))	892 Economic Stabilization Act 893 Environmental Matters 894 Energy Allocation Act 895 Freedom of information Act
210 Land Condemnation 220 Foreclosure 230 Rent Lease & Ejectment 240 Torts to Land 245 Tort Product Liability 290 All Other Real Property	441 Voting 442 Employment 443 Housing/ Accommodations 444 Welfare 440 Other Civil Rights	510 Motions to Sentence HABEAS CORI 530 General D 535 Death Pen D 540 Mandamu D 550 Civil Right D 555 Prison Co	PUS: alty s & Other s	28 Disclosure Act 740 Railway Labor Act 790 Other Labor Litigation XX 791 Empl. Ret. Inc. Security Act	FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 671 IRS — Third Party 26 USC 7609	☐ 900 Appeal of Fee Determination Under Equal Access to Justice ☐ 950 Constitutionality of State Statutes ☐ 890 Other Statutory Actions
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VI. CAUSE OF ACTION	(CITE THE U.S. CIML STA DO NOT CITE JURISDIC J.S.C. secs. 100	TIONAL STATUTES L	H YOU ARE F INLESS DIVE	ILING AND WRITE BRIEF STATEM RSITY.)		
VII. REQUESTED IN COMPLAINT:	CHECK IF THIS IS UNDER F.R.C.P. 2		TION	DEMAND \$	CHECK YES JURY DEM	only if demanded in complaint: AND: XX YES □ NO
VIII.RELATED CASE	(S) (See instructions): Ju	JDGENone			DOCKET NUMBER	
DATE 11/25/03	56	SIGNATURE OF	ATTORNEY	OF RECORD		

FOR OFFICE USE ONLY

UNITED STATES DISTRICT COURT DISTRICT OF MASSACHUSETTS

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